MARTIN
PL2

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: International Logistics Group, Ltd.

File: B-223578

Date: October 24, 1986

DIGEST

1. Protester has not carried its burden of affirmatively proving its case, where protester's unsupported allegation that it made a definite offer to reduce its proposal price is contradicted by the agency which contends that the protester merely stated that it might lower its price and the agency supports this version with a document prepared on the day of the conversation. Furthermore, alleged price reduction could not properly have been accepted since reduction was offered, if at all, approximately 4 months after closing date for receipt of proposals and the only other offeror was not offered an opportunity to revise its proposal after closing date.

2. Agency properly permitted extensions of the proposal acceptance period from the only acceptable offeror, where extensions did not compromise the integrity of the competitive procurement system and the protester was not prejudiced thereby.

3. Protest that agency unfairly required the protester to provide proof that it was offering the specified parts, since under previous contracts protester had an understanding with the agency that such proof could be furnished at the time of inspection of the parts before delivery, is denied since such an understanding conflicts with the RFP provisions which require such proof with submission of the offer.

4. Protest--alleging that procurement should have been advertised and that solicitation was unduly restrictive--submitted 5 months after receipt of proposals is untimely since the General Accounting Office Bid Protest Regulations (4 C.F.R. § 21.2(a)(1) (1986)) require that protests based upon alleged improprieties that were apparent prior to the receipt of proposals be filed prior to the closing date for receipt of proposals.

5. The protester has not met its burden of affirmatively proving its case where the protest allegations are based on "information and belief" with no supporting evidence and the protester's speculations are disputed by the agency.

6. Where a protest has been found to be without legal merit, the protester's claim for all costs, including legal fees, is denied.

DECISION

International Logistics Group, Ltd. (ILG) protests the award of a contract by the Defense Logistics Agency (DLA) to the Chrysler Corporation under request for proposals (RFP) No. DLA700-86-R-0200. ILG contends that it should have received this award for cylinder heads for gasoline engines because its price was lower than Chrysler's price. ILG also alleges that there were numerous deficiencies in the contracting officer's conduct of the procurement, that the requirement should have been advertised rather than negotiated, and that the solicitation was unduly restrictive.

The protest is denied in part and dismissed in part.

On November 4, 1985, DLA received two proposals in response to its solicitation. Chrysler submitted a unit price of $444.25 for the required 705 units and ILG offered a unit price of $944.25 for a partial quantity of 400 units. On November 18, DLA issued an amendment which, among other things, supplied several pages inadvertently omitted from the original RFP and extended the closing date for receipt of proposals to December 3. ILG acknowledged this amendment on December 3 without changing its price, but Chrysler did not acknowledge the amendment at that time.

On January 23, 1986, DLA issued another amendment which made several changes regarding competition from labor surplus area firms and established February 7 as the date for receipt of new proposals. ILG acknowledged receipt of this amendment and reduced its unit price to $466.00 for the total quantity of 705 units. Chrysler acknowledged both amendments on February 7 and left its price unchanged at $444.25.

On June 6, DLA and ILG apparently had two telephone conversations, the contents of which are disputed. DLA's version is that ILG stated it "might" lower its unit price by $100 for a partial quantity of 337 units and was told by DLA that it had until the end of that day to submit a revised offer along

with evidence showing that it was offering Chrysler parts. DLA documented these conversations on a "CONVERSATION RECORD" form, dated June 6, with the subject matter listed as a "possible reduction in price."

ILG insists that it orally made a definite offer "for a reduction in price of more than $100.00 per unit for a quantity of less than 337 units and a lot price of $99,500.00 for 337 Units." This amounts to a unit price of $295.25 for the lot of 337 units but it is unclear what price ILG allegedly offered if anything less than 337 units were bought.

In any event, ILG did not submit a written, revised offer by the end of the day on June 6, and DLA made an award to Chrysler on June 9 at its unchanged unit price of $444.25. DLA did not hear further from ILG until receipt of a telegram and a letter, both dated June 17, which offered to supply Chrysler parts at a unit price of $300 or a lot price of $99,500 for 337 units. When ILG learned that the contract had already been awarded, it protested to our Office.

The only evidence as to whether ILG made a definite price reduction on June 6 or merely stated that it might do so is the contradictory statements of the parties and DLA's contemporaneous memorandum of the two phone conversations which indicates that ILG might lower its price and that the particular features of such a new offer should be confirmed by the end of the day. ILG's letter of June 17 provides no support for ILG's position that it was a confirmation of the June 6 offer because it refers only to a telephone conversation of June 17 and makes no reference to an offer made on June 6. In these circumstances, ILG has not met its burden of affirmatively proving that it made a definite offer to reduce its price. SALJ of America, Inc., B-217258, April 9, 1985, 85-1 CPD ¶ 408.

Even if ILG had made an oral offer on June 6, that offer could not properly have been considered unless Chrysler was given an opportunity to revise its proposal. This is so because the opportunity to revise a proposal constitutes discussions and when discussions are held with one offeror, they must be conducted with all offerors within the competitive range. True Machine Co., B-215885, Jan. 4, 1985, 85-1 CPD ¶ 18 at 4, 5. Moreover, there was nothing in the RFP which authorized the submission of oral offers, and we think it is clear from a reading of the RFP that oral offers were not contemplated. For example, the RFP incorporated the

provision set out in FAR, § 52.215-9 (FAC 84-5, April 1, 1985), which provides that offers and modifications to offers must be submitted in sealed envelopes or packages. See Gregory A. Robertson, B-213351, June 5, 1984, 84-1 CPD ¶ 592. Finally, both ILG's alleged oral offer of June 6 and its alleged confirmation of that offer by letter of June 17 were received by DLA approximately 4 months after the date set for receipt of proposals (February 7) by the last amendment to the RFP. Thus, the reduction in price could only be considered in the circumstances set out in FAR § 52.215-10 (FAC 84-5, April 1, 1985)--"Late Submissions, Modifications, and Withdrawals of Proposals"--which was incorporated into the RFP. None of those exceptions are applicable here. See FAR, § 52.215-10.

ILG also contends that, on June 6, the contracting officer improperly permitted Chrysler to extend its offer acceptance period to June 9. This, ILG argues, compromised the integrity of the competitive procurement system. We disagree and find that the extension was proper in this case.

Our Office has recognized that an offeror may extend its acceptance period and even revive an expired offer if this would not compromise the integrity of the competitive procurement system. See United Electric Motor Co., Inc., B-191996, Sept. 18, 1978, 78-2 CPD ¶ 206. Circumstances that compromise the system's integrity include those where acceptance of the extension by the agency would be prejudicial to the other offerors. We cannot see how ILG was prejudiced by Chrysler's extension of its acceptance period since, as discussed below, the record shows that Chrysler submitted the only acceptable offer. See United Electric Motor Co., Inc., B-191996, supra, 78-2 CPD ¶ 206 at 4.

ILG further contends that DLA's insistence on proof that ILG was offering Chrysler parts was unfair because ILG had an understanding with DLA on its previous contracts that such proof could be provided at the time the parts were presented for acceptance. We find no merit to this argument. Such an understanding would be clearly inconsistent with the express terms of the RFP which requires any offeror other than Chrysler to submit with its offer evidence that it was offering Chrysler parts. ILG submitted no such evidence and DLA determined ILG's proposal to be unacceptable. When an RFP requires submission with the proposal technical information that the agency needs for its evaluation of the technical adequacy of a proposal, an offeror that does not comply must accept the risk that its proposal will be found to be

unacceptable. See AEG Aktiengesellschaft, B-221079, Mar. 18, 1986, 65 Comp. Gen. ____, 86-1 CPD ¶ 267 at 4. Moreover, the propriety of each award depends on the facts and circumstances pertaining to it and not to prior procurements. Alfa-Laval, Inc., B-221620, May 15, 1986, 86-1 CPD ¶ 464 at 4. Thus, an improper award in a prior procurement provides no basis for justifying repetition of the same error in subsequent procurements. Richard N. Stockebrand, B-220218, Sept. 24, 1985, 85-2 CPD ¶ 332.

ILG's contentions that the procurement should have been advertised and that the solicitation was unduly restrictive are untimely under our Bid Protest Regulations which require that protests based upon alleged improprieties in an RFP that are apparent before the closing date for receipt of initial proposals be filed by that date. 4 C.F.R. § 21.2(a)(1) (1986). Here, the closing date for receipt of initial proposals was originally November 4, 1985, but after amendment was extended to February 7, 1986. It was clearly apparent from the face of the solicitation that it was an RFP and that it required Chrysler products or identical alternative products along with evidence showing that the products were as specified. ILG did not, however, protest until July 8, 1986, more than 5 months after the amended closing date. Thus, this aspect of its protest will not be considered on the merits. Mount Pleasant Hospital, B-222364, June 13, 1986, 86-1 CPD ¶ 549.

ILG has presented several additional allegations based on its "information and belief" but has provided no evidence in support of them. ILG charges that information in ILG's original offer was released by DLA to Chrysler, that Chrysler told DLA that ILG was offering inferior or non-genuine Chrysler parts, that DLA pointed out to Chrysler serious deficiencies in its proposal resulting in technical transfusion and radical changes in Chrysler's proposal and price, and that DLA permitted Chrysler to modify its original proposal without giving ILG the same opportunity. None of these allegation is supported by the record. DLA denies releasing any information regarding ILG's proposal to Chrysler or receiving any information from Chrysler regarding the parts offered by ILG. There is no indication in the record that discussions took place between Chrysler and DLA or that Chrysler's proposal or price changed between initial submission and award. Thus, ILG has again failed to meet its burden of affirmatively proving its case since its evidence consists only of its speculations which are disputed by the DLA and are not supported by the record. Tyler Construction Corp., B-221337, Mar. 19, 1986, 86-1 CPD ¶ 271.

Since we have found ILG's protest to be without merit, we deny its claim for reimbursement of all of its "appropriate costs," including legal fees. Designware, Inc., B-221423, Feb. 20, 1986, 86-1 CPD ¶ 181.

The protest is denied in part and dismissed in part.

for Seymour Efros
Harry R. Van Cleve
General Counsel